

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MITCHELL TAEBEL,	}	Case No. CV 18-06697-PA (JDE)
Plaintiff,		
v.		ORDER DISMISSING
DOJ,		COMPLAINT PURSUANT TO 28
Defendant.		U.S.C. § 1915A

I.

INTRODUCTION

On August 3, 2018, the Court received for filing a Complaint by Plaintiff Mitch Taebel (“Plaintiff”), proceeding pro se, against the United States Department of Justice (“DOJ”), alleging that his constitutional rights have been “breached” in that reports of a “capitol offense in progress” have been made, but the DOJ did not “uphold and faithfully execute the law.” Dkt. 1 at 1. Plaintiff further alleges that tax funding, presumably of the DOJ, is justified on protecting the constitution and the rights of citizens and ensuring the integrity of state law enforcement. Id. Plaintiff alleges he has been “legally kidnapped” and is unlawfully detained in violation of 42 U.S.C. § 242, the federal criminal civil rights statute. Id. Plaintiff “claims 100 billion.” Id.

1 Plaintiff did not pay a filing fee or file a request to proceed in forma
2 pauperis (“IFP”). Plaintiff included his booking number for the Lower Bucky
3 Jail, located in Phoenix, Arizona (“Jail”), and identified the Jail as his
4 residence. Id. The Court takes judicial notice of a prior filing by Plaintiff, with
5 the same booking number, also indicating he resides at the Jail, in a case
6 transferred by this Court to the District of Arizona. Mitchell Taebel v. Greg
7 Stanton, No. 2:18-cv-02759-PA-JDE, Dkt. No. 1.

8 II.

9 PLAINTIFF NEITHER PAID THE MANDATORY FILING FEE
10 NOR SOUGHT LEAVE TO PROCEED IN FORMA PAUPERIS

11 All parties instituting any civil action in a district court, except an
12 application for writ of habeas corpus, must pay a filing fee of \$400. See 28
13 U.S.C. § 1914(a).¹ An action may proceed despite a plaintiff’s failure to prepay
14 the entire fee only leave to proceed IFP is granted under 28 U.S.C. § 1915(a).
15 See Andrew v. Cervantes, 493 F.3d 1047, 1051 (9th Cir. 2007).

16 Plaintiff has not paid the \$350 filing or \$50 administrative fee, nor has he
17 submitted a properly supported request to proceed IFP. Thus, his case cannot
18 proceed. See 28 U.S.C. § 1914(a); Andrews, 493 F.3d at 1051.

19 III.

20 DISMISSAL IS MANDATED UNDER 28 U.S.C. § 1915A

21 This Court must, under 28 U.S.C. § 1915A(a), “review, before
22 docketing, if feasible, or, in any event, as soon as practicable after docketing, a
23 complaint in a civil action in which a prisoner seeks redress from a government
24 entity.” Upon such review, the Court “shall . . . dismiss the complaint, or any
25 portion of the complaint, if the complaint – (1) is frivolous, malicious, or fails

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27 ¹ In addition to the \$350 filing fee, civil litigants must pay an administrative fee of \$50. See
28 28 U.S.C. § 1914 (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14).
The additional fee does not apply to persons granted leave to proceed IFP. See id.

1 to state a claim upon which relief can be granted; or (2) seeks monetary relief
2 from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b).

3 Here, Plaintiff is a prisoner suing a government entity; as a result, this
4 action is subject to the mandatory screening and mandatory dismissal if the
5 complaint is frivolous, fails to state a claim, or seeks monetary relief from a
6 defendant who is immune from such relief. As set forth further below, the
7 Court finds the Complaint is frivolous, fails to state a claim, and seeks
8 damages from a defendant who is immune from such relief, and therefore must
9 be dismissed.

10 **A. Standard of Review**

11 Dismissal for failure to state a claim can be based on either the lack of a
12 cognizable legal theory or the absence of factual support for such a theory. See
13 Mediondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008).
14 A “plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’
15 requires more than labels and conclusions, and a formulaic recitation of the
16 elements of a cause of action will not do. . . . Factual allegations must be
17 enough to raise a right to relief above the speculative level . . . on the
18 assumption that all the allegations in the complaint are true (even if doubtful in
19 fact).” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal
20 citations omitted); see also Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). A
21 complaint may also be dismissed for failure to state a claim if it discloses some
22 fact or complete defense that will necessarily defeat the claim. Franklin v.
23 Murphy, 745 F.2d 1221, 1228-29 (9th Cir. 1984). Further, a case is frivolous if
24 it is “‘of little weight or importance: having no basis in law or fact.’” Andrews
25 v. King, 398 F.3d 1113, 1121 (9th Cir. 2005) (quoting Webster’s Third New
26 International Dictionary 913 (1993)).

27 Because Plaintiff is proceeding pro se, the Court liberally construes his
28 pleadings. See Eldridge v. Block, 832 F.2d 1132, 1137 (9th Cir. 1987). The

1 court also recognizes that “[u]nless it is absolutely clear that no amendment
2 can cure the defect ... a pro se litigant is entitled to notice of the complaint's
3 deficiencies and an opportunity to amend prior to dismissal of the action.”
4 Lucas v. Dep't of Corr., 66 F.3d 245, 248 (9th Cir. 1995); see also Lopez v.
5 Smith, 203 F.3d 1122, 1126 (9th Cir. 2000). However, a court may deny leave
6 to amend where further amendment would be futile. Id.

7 **B. The Governing Law**

8 “Absent a waiver, sovereign immunity shields the Federal Government
9 and its agencies from suit.” Federal Deposit Ins. Corp. v. Meyer, 510 U.S. 471,
10 475 (1993). The United States has not waived sovereign immunity with respect
11 to constitutional claims for damages. Rivera v. United States, 924 F.2d 948,
12 951 (9th Cir. 1991); see also Hodge v. Dalton, 107 F.3d 705, 707 (9th Cir.
13 1997) (“The doctrine of sovereign immunity applies to federal agencies and to
14 federal employees acting within their official capacities.”). “Where a suit has
15 not been consented to by the United States, dismissal of the action is required.”
16 Gilbert v. DaGrossa, 756 F.2d 1455, 1458 (9th Cir. 1985).


17 Further, unless some other recognized constitutional right is implicated,
18 there is no cognizable cause of action against law enforcement officers for the
19 manner in which they investigate claims. Gomez v. Whitney, 757 F.2d 1005,
20 1005-06 (9th Cir. 1985). Stated another way, a civil rights plaintiff “does not
21 have a constitutional right to have his complaints heard in a particular
22 manner.” Hanson v. Beck, No. CV 13-3274-SVW (JPR), 2013 WL 6732672 at
23 *3 (C.D. Cal. Dec. 13, 2013) (dismissing § 1983 complaint alleging failure to
24 investigate citizen complaints).

25 Here, as set forth above, the DOJ, an arm of the Federal Government, is
26 immune from a civil rights suit for damages. Further, the purported basis for
27 Plaintiff's claims – his disagreement with how the DOJ handled a complaint –
28 is not a cognizable basis for a civil rights action. Procedurally and

1 substantively, Plaintiff's Complaint is frivolous, fails to state a claim, and seeks
2 monetary relief from a defendant who is immune from suit. Further, the
3 defects result from legal deficiencies that cannot be cured by amendment. The
4 Complaint must be dismissed, without leave to amend, under 28 U.S.C. §
5 1915A(b).

6 IT IS THEREFORE ORDERED that the case be immediately
7 DISMISSED.

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9 Dated: August 8, 2018

10 
11 PERCY ANDERSON
12 United States District Judge

13 Presented by:

14 
15 JOHN D. EARLY
16 United States Magistrate Judge
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